

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 9 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

SAURSHTRA BOTTLING PVT LTD.

Appearance:

Mr.Mihir Thakore, with MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 27/02/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal,
Ahmedabad has referred the following two questions for

the opinion of this Court under section 256(1) of the Income-tax Act.

"1. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that bottles and shells are used in business of bottling soft drinks were plant within the meaning of section 43(3) of the Income Tax Act and hence entitled to depreciation?

"2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that no order under section 263 of the Act can be passed in respect of an assessment order passed by the Income tax Officer under section 143(3) read with section 144B of the Act?"

2. The question no.1 had arisen for the consideration of this Court in Income-tax Reference No. 206 of 1985 in the assessee's case for the assessment year 1978-79. By the judgment and order dated 13.2.1998, it was held in that regard that bottles and shells used by the assessee for its business and which continued to be of its ownership even after supply of the soft drinks to the purchaser were "plant" and they were neither supplies nor stock-in-trade. For the same reasons that were given for deciding the said question in Income tax Reference No. 206 of 1985, the question no.1 is answered in the affirmative in favour of the assessee and against the Revenue. The question no. 2 relates to the power of the Commissioner under section 263 of the Act in upsetting the assessment order which was made by the ITO who had taken the view that the bottles and shells used by the assessee were "plant". In view of our finding on the question no. 1, it is not necessary to answer the question no. 2 and therefore, the question no. 2 is not answered. The Reference stands disposed of accordingly with no order as to costs.

(R.K.Abichandani,J)

(Kundan Singh,J)

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